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Wade Jackson

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EXAMINER

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Please find below and/or attached an Office communication concerning this application or proceeding.

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/628,555
Filing Date: July 29, 2003
Appellant(s): JACKSON ET AL.

JOSEPH S. PRESTA
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed on 9/23/08 appealing from the Office action mailed 01/23/08.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

20030154141	CAPAZARIO ETAL.	8-2003
20010034609	DOVOLIS	10-2001
6151582	HUANG ET AL.	11-2000

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-9 and 11-23 are rejected under 35 U.S.C 103 (a). This rejection is set forth in the prior Office Action. The rejection is set forth below as it appears in the previous Office Action mailed on 01/23/08.

Claims 1-9 and 11-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Capazario et al. (2003/0154141) in view of Huang et al. (6,151,582) and further in view of Dovolis (2001/0034609).

As per claim 1, Capazario discloses a system for use by a sales administrator for allocating product, comprising: an accounts interface for allowing the sales administrator to define accounts for product allocation (See Capazario, Page 1, Paragraphs 0002-0003); a products interface for allowing the sales administrator to define products for allocation (See Capazario, Page 2, Paragraph 0013); an allocation interface that

Art Unit: 3687

enables the sales administrator to assign an allocation method for each defined product (See Capazario, Page 7, Paragraph 0088).

Capazario does not explicitly disclose a computer program that summarizes analysis statistics by allocation method, time and products; a statistics interface that displays the summarized analysis statistics and enables the sales administrator to perform a historical analysis of product performance by account; a computer program that allocates a launch quantity to each account for a new product launch and allocates product to each account for replenishment of a previously launched product based on the allocation method assigned to the product.

However, this feature is known in the art, as evidenced by Huang. In particular, Huang suggests that the system having a computer program that summarizes analysis statistics by allocation method, time and products (See Huang, Co1.44, lines 55-67 to Co1.45, line 14); a statistics interface that displays the summarized analysis statistics and enables the sales administrator to perform a historical analysis of product performance by account (See Huang, Co1.93, lines 38-67); a computer program that allocates a launch quantity to each account for a new product launch and allocates product to each account for replenishment of a previously launched product based on the allocation method assigned to the product (See Huang, Fig.49; Co1.31, lines 39-55; Co1.32, lines 24-52).

It would have been obvious to one of ordinary skill in the art at the time of the invention to have included the feature of Huang within the system of Capazario with the motivation of allowing the manufacturer or vendor to plan the supply of goods and

Art Unit: 3687

services for a customer that integrates all information about a product, including current, past and projected future sales and inventory, into a feasible replenishment plan (See Huang, Co1.2, lines 11-16).

In addition, as best understood, Capazario and Huang do not explicitly disclose "to a plurality of locations", "each account corresponding to at least one said location in said plurality of locations", "among said plurality of locations", "and/or reassign", "the allocation method being at least one of a fixed allocation method, a static allocation method, and a dynamic allocation method", "and in accordance with a predefined business allocation goal provided by the sales administrator for the plurality of locations".

However, these features are known in the art, as evidenced by Dovolis. In particular, Dovolis suggests that the system having "to a plurality of locations", "each account corresponding to at least one said location in said plurality of locations", "among said plurality of locations", "and/or reassign", "the allocation method being at least one of a fixed allocation method, a static allocation method, and a dynamic allocation method", "and in accordance with a predefined business allocation goal provided by the sales administrator for the plurality of locations" (See Dovolis, Page 8, Paragraph 0091).

It would have been obvious to one of ordinary skill in the art at the time of the invention to have included the features of Dovolis within the collective teachings of Capazario and Huang with the motivation of providing a system and method for

Art Unit: 3687

managing personal and/or business assets (See Dovolis, Fig.9; Page 1, Paragraph 0002).

The remaining features are rejected for the same reasons given in the prior Office Action, and incorporated herein.

As per claim 2, Capazario discloses the system further including a redistribute procedure that uses product availability measures to redistribute the allocations based on product availability and allocation methods used (See Capazario, Page 2, Paragraphs 0018-0019; Page 4, Paragraph 0051).

As per claim 3, Huang discloses the system further including an allocation interface that shows the allocations for a selected product (See Huang, Co1.31, lines 30- 55).

The motivation for combining the respective teachings of Capazario, Huang and Dovolis are as discussed above in the rejection of claim 1 above, and incorporated herein.

As per claim 4, Huang discloses the system wherein the allocation interface enables the sales administrator to make manual adjustments to the computer generated allocations (See Huang, Co1.26, lines 63-67 to Co1.27, line 15).

The motivation for combining the respective teachings of Capazario, Huang and Dovolis are as discussed above in the rejection of claim 1 above, and incorporated herein.

As per claim 5, Huang discloses the system further including a procedure that loads the allocations into an order processing system (See Huang, Co1.51, lines 5-21). The motivation for combining the respective teachings of Capazario, Huang and Dovolis are as discussed above in the rejection of claim 1 above, and incorporated herein.

As per claim 6, Huang discloses the system, wherein the products interface enables products groups to be defined (See Huang, Co1.93, lines 38-52). The motivation for combining the respective teachings of Capazario, Huang and Dovolis are as discussed above in the rejection of claim 1 above, and incorporated herein.

As per claim 7, Huang discloses the system wherein the accounts interface enables account groups to be defined, and the allocation interface enables an account group to be selected for display of the allocation (See Huang, Co1.93, lines 2-36).

The motivation for combining the respective teachings of Capazario, Huang and Dovolis are as discussed above in the rejection of claim 1 above, and incorporated herein.

As per claim 8, Huang discloses the system wherein the redistribute procedure takes product advertisement information into account when redistributing allocations (See Huang, Co1.50, lines 10-45).

The motivation for combining the respective teachings of Capazario, Huang and Dovolis are as discussed above in the rejection of claim 1 above, and incorporated herein.

As per claim 9, Huang discloses the system further including an interface to an ad planning system which provides the advertisement information to the system (See Huang, Co1.55, lines 39-50).

The motivation for combining the respective teachings of Capazario, Huang and Dovolis are as discussed above in the rejection of claim 1 above, and incorporated herein.

As per claim 11, Huang discloses the system further including a logging function that enables display of revision history for allocations (See Huang, Co1.103, lines 36-56).

The motivation for combining the respective teachings of Capazario, Huang and Dovolis are as discussed above in the rejection of claim 1 above, and incorporated herein.

As per claim 12, Huang discloses the system wherein the statistics interface displays historical information for related products for use by the sales administrator in making allocation decisions (See Huang, Co1.108, lines 54-67 to Co1.109, line 18; Co1.111, lines 1-11).

The motivation for combining the respective teachings of Capazario, Huang and Dovolis are as discussed above in the rejection of claim 1 above, and incorporated herein.

As per claim 13, Capazario discloses in a system for use by a sales administrator for allocating product to a plurality of locations, a method comprising: receiving, via an accounts interface, input from the sales administrator defining accounts for product allocation, each said account corresponding to at least one said location in said plurality of locations (See Capazario, Page 1, Paragraphs 0002-0003); receiving, via a products interface, input from the sales administrator defining products for allocation among said plurality of locations (See Capazario, Page 2, Paragraph 0013); receiving, via an allocation interface, input from the sales administrator assigning and/or reassigning an allocation method for each defines product (See Capazario, Page 7, Paragraph 0088).

Capazario does not explicitly disclose that the system having the allocation method being either a static allocation method or a dynamic allocation method; summarizing analysis statistics by allocation method, time and products; displaying, via a statistics interface, the summarized analysis statistics, the statistics interface enabling

Art Unit: 3687

the sales administrator to perform a historical analysis of product performance by account.

However, this feature is known in the art, as evidenced by Huang. In particular, Huang suggests that the system having the allocation method being either a static allocation method or a dynamic allocation method (See Huang, Fig.4; Co1.6, lines 45-67; Co1.8, lines 30-49); summarizing analysis statistics by allocation method, time and products (See Huang, Co1.44, lines 55-67 to Co1.45, line 14); displaying, via a statistics interface, the summarized analysis statistics, the statistics interface enabling the sales administrator to perform a historical analysis of product performance by account (See Huang, Co1.93, lines 38-67).

It would have been obvious to one of ordinary skill in the art at the time of the invention to have included the feature of Huang within the system of Capazario with the motivation of allowing the manufacturer or vendor to plan the supply of goods and services for a customer that integrates all information about a product, including current, past and projected future sales and inventory, into a feasible replenishment plan (See Huang, Co1.2, lines 11-16).

As best understood, Capazario and Huang do not explicitly disclose the system having allocating a launch quantity to each account for a new product launch and allocating product to each account for replenishment of a previously launched product, based on the allocation method assigned to the product and in accordance with a predefined business allocation goal provided by the sales administrator for the plurality of locations.

However, this feature is known in the art, as evidenced by Dovolis. In particular, Dovolis suggests that the system having allocating a launch quantity to each account for a new product launch and allocating product to each account for replenishment of a previously launched product, based on the allocation method assigned to the product and in accordance with a predefined business allocation goal provided by the sales administrator for the plurality of locations (See Dovolis, Page 8, Paragraph 0091).

It would have been obvious to one of ordinary skill in the art at the time of the invention to have included the features of Dovolis within the collective teachings of Capazario and Huang with the motivation of providing a system and method for managing personal and/or business assets (See Dovolis, Fig.9; Page 1, Paragraph 0002).

Claims 14-23 repeat the limitations of the underlying process steps of the elements of claims 2-9 and 11-12, respectively. As the various elements of claims 2-9 and 11-12 and have been shown to be either disclosed by or obvious in view of the collective teachings of Capazario, Huang and Dovolis, it is apparent that the method disclosed by the applied prior art performs the recited underlying functions. As such, the limitations recited in claims 14-23 are rejected for the same reasons given above for systems claims 2-9 and 11-12, and incorporated herein.

(10) Response to Argument

(A) In the Appeal Brief filed 9/23/08, Appellant makes the followings:

(i) The combination of Capazario, Huang and Dovolis does not teach or suggest each and every limitation of independent claims 1 and 13 or their respective dependents.

(ii) The combination appears to be nothing more than an attempted hindsight reconstruction of Appellant's claims.

(iii) The combination fails to teach predefined business allocation goal provided by the sales administrator for the plurality of locations as required by claims 1 and 13.

(iv) The Final Office Action employs a piece-meal examination of the independent claims.

(B) Examiner will address Appellant's arguments in sequence and their related points as they appear in the Brief.

In response to Appellant first argument, it is respectfully submitted that obviousness is determined on the basis of the evidence as a whole and the relative persuasiveness of the arguments. See *In re Oetiker*, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992); *In re Hedges*, 783 F.2d 1038, 1039, 228 USPQ 685,686 (Fed. Cir. 1992); *In re Piasecki*, 745 F.2d 1468, 1472, 223 USPQ 785,788 (Fed. Cir. 1984); and *In re Rinehart*, 531 F.2d 1048, 1052, 189 USPQ 143,147 (CCPA 1976). Using this standard, the Examiner respectfully submits that he has at least satisfied the burden of presenting a prima facie case of obviousness, since he has presented evidence of corresponding claim elements in the prior art and has expressly articulated the combinations and the motivations for combinations that fairly suggest

Art Unit: 3687

Appellant's claimed invention. Note, for example, in rejection of claim 1, Examiner had stated the following:

As per claim 1, Capazario discloses a system for use by a sales administrator for allocating product, comprising: an accounts interface for allowing the sales administrator to define accounts for product allocation (See Capazario, Page 1, Paragraphs 0002-0003); a products interface for allowing the sales administrator to define products for allocation (See Capazario, Page 2, Paragraph 0013); an allocation interface that enables the sales administrator to assign an allocation method for each defined product (See Capazario, Page 7, Paragraph 0088).

Capazario does not explicitly disclose a computer program that summarizes analysis statistics by allocation method, time and products; a statistics interface that displays the summarized analysis statistics and enables the sales administrator to perform a historical analysis of product performance by account; a computer program that allocates a launch quantity to each account for a new product launch and allocates product to each account for replenishment of a previously launched product based on the allocation method assigned to the product.

However, this feature is known in the art, as evidenced by Huang. In particular, Huang suggests that the system having a computer program that summarizes analysis statistics by allocation method, time and products (See Huang, Co1.44, lines 55-67 to Co1.45, line 14); a statistics interface that displays the summarized analysis statistics and enables the sales administrator to perform a historical analysis of product performance by account (See Huang, Co1.93, lines 38-67); a computer program that

Art Unit: 3687

allocates a launch quantity to each account for a new product launch and allocates product to each account for replenishment of a previously launched product based on the allocation method assigned to the product (See Huang, Fig.49; Co1.31, lines 39-55; Co1.32, lines 24-52).

It would have been obvious to one of ordinary skill in the art at the time of the invention to have included the feature of Huang within the system of Capazario with the motivation of allowing the manufacturer or vendor to plan the supply of goods and services for a customer that integrates all information about a product, including current, past and projected future sales and inventory, into a feasible replenishment plan (See Huang, Co1.2, lines 11-16).

In addition, as best understood, Capazario and Huang do not explicitly disclose "to a plurality of locations", "each account corresponding to at least one said location in said plurality of locations", "among said plurality of locations", "and/or reassign", "the allocation method being at least one of a fixed allocation method, a static allocation method, and a dynamic allocation method", "and in accordance with a predefined business allocation goal provided by the sales administrator for the plurality of locations".

However, these features are known in the art, as evidenced by Dovolis. In particular, Dovolis suggests that the system having "to a plurality of locations", "each account corresponding to at least one said location in said plurality of locations", "among said plurality of locations", "and/or reassign", "the allocation method being at least one of a fixed allocation method, a static allocation method, and a dynamic

Art Unit: 3687

allocation method", "and in accordance with a predefined business allocation goal provided by the sales administrator for the plurality of locations" (See Dovolis, Page 8, Paragraph 0091).

It would have been obvious to one of ordinary skill in the art at the time of the invention to have included the features of Dovolis within the collective teachings of Capazario and Huang with the motivation of providing a system and method for managing personal and/or business assets (See Dovolis, Fig.9; Page 1, Paragraph 0002).

The remaining features are rejected for the same reasons given in the prior Office Action, and incorporated herein.

Furthermore, it is respectfully submitted that obviousness is determined on the basis of the evidence as a whole and the relative persuasiveness of the arguments. See *In re Oetiker*, 977F.2d 1443, 1445, 24USPQ2d 1443, 1444 (Fed. Cir. 1992); *In re Hedges*, 783F.2d 1038, 1039, 228 USPQ 685, 686 (Fed. Cir. 1992); *In re Piasecki*, 745 F.2d 1468, 1472, 223 USPQ 785, 788 (Fed. Cir.1984); and *In re Rinehart*, 531 F.2d 1048, 1052, 189 USPQ 143, 147 (CCPA 1976). Using this standard, the Examiner respectfully submits that he has at least satisfied the burden of presenting a prima facie case of obviousness, since he has presented evidence of corresponding claim elements in the prior art by expressly pointing to specific portions of each applied reference and has expressly articulated the combinations and the motivations for combinations as well as the scientific and logical reasoning of one skilled in the art at the time of the invention that fairly suggest Applicant's claimed invention.

Art Unit: 3687

Each applied reference does not expressly suggest combination with the other respective references; however, the Examiner has shown that motivation for combining the references existed in the prior art. Within the present combinations, all of the modifications proposed by the Examiner are taught by the references and that knowledge generally available to one of ordinary skill in the art. Therefore, the combination of references is proper and the rejection maintained.

In addition, the Examiner recognizes that references cannot be arbitrarily altered or modified and that there must be some reason why one skilled in the art would be motivated to make the proposed modifications. However, although the Examiner agrees that the motivation or suggestion to make modifications must be articulated, it is respectfully contended that there is no requirement that the motivation to make modifications must be expressly articulated within the references themselves.

References are evaluated by what they suggest to one versed in the art, rather than by their specific disclosures, In re Bozek, 163 USPQ 545 (CCPA 1969).

The Examiner is concerned that Appellant apparently ignores the mandate of the numerous court decisions supporting the position given above. The issue of obviousness is not determined by what the references expressly state but by what they would reasonably suggest to one of ordinary skill in the art, as supported by decisions in In re DeLisle 406 Fed 1326, 160 USPQ 806; In re Kell, Terry and Davies 208 USPQ 871; and In re Fine, 837 F.2d 1071, 1074, 5 USPQ 2d 1596, 1598 (Fed. Cir. 1988) (citing In re Lalu, 747 F.2d 703, 705, 223 USPQ 1257, 1258 (Fed. Cir. 1988)). Further, it was determined in In re Lamberti et al, 192 USPQ 278 (CCPA) that:

Art Unit: 3687

- (i) obviousness does not require absolute predictability;
- (ii) non-preferred embodiments of prior art must also be considered; and
- (iii) the question is not express teaching of references, but what they would suggest.

According to *In re Jacoby*, 135 USPQ 317 (CCPA 1962), the skilled artisan is presumed to know something more about the art than only what is disclosed in the applied references. In *In re Bode*, 193 USPQ 12 (CCPA 1977), every reference relies to some extent on knowledge of persons skilled in the art to complement that which is disclosed therein. Therefore, Appellant argument is not persuasive and the rejection is hereby sustained.

(C) With respect to Appellant second argument, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the Applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). Therefore, Appellant argument is not persuasive and the rejection is hereby sustained.

Art Unit: 3687

(D) With respect to Appellant third argument, the Examiner respectfully submitted that He relied upon the teaching of Dovolis Page 8, Paragraph 0091 for such a feature. As such, the Examiner respectfully submitted that such terms were given their broadest reasonable interpretations during examination, and since the applied reference clearly discloses the claimed limitations, when given their broadest reasonable interpretations, it is respectfully submitted that the Examiner's reliance on Dovolis is indeed proper. Therefore, Appellant argument is not persuasive and the rejection is hereby sustained.

(E) In response to Appellant's piecemeal analysis of the references, it is respectfully submitted that one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed.Cir. 1986). In addition, the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981). The skilled artisan would not consider the prior art embodiments in a vacuum, but would have had the motivation to combine the advantageous features of the prior art in the manner purported by the Examiner for the reasons and motivations given in the prior Office Action. Thus, the teachings of Capazario, Huang and Dovolis when considered with the knowledge that is generally

Art Unit: 3687

available to one of ordinary skill in the art make obvious the limitations that Appellant disputes.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

Art Unit: 3687

For the above reasons, it is believed that the rejection should be sustained.

Respectfully submitted,

/Vanel Frenel/

Examiner, Art Unit 3687

January 19, 2009

/Matthew S Gart/

Supervisory Patent Examiner, Art Unit 3687

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Page 21

Art Unit: 3687

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